

1979 WL 43584 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 11, 1979

*1 William H. Seals, Esquire
Marion County Attorney
Post Office Box 183
Marion, South Carolina 29571

Dear Mr. Seals:

In response to your request for an opinion from this Office regarding the procedure for appointing members of the Marion County Board of Education (Board) after January 1, 1980, my opinion is that the Marion County Council (Council) will continue to recommend them for appointment by the Governor pursuant to [Section 4-9-170, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as implemented by Act No. 734 of 1976 [59 STAT. 2187 (1976)]. In view of the South Carolina Supreme Court's language in [Moye v. Caughman, 265 S.C. 140 \(1975\)](#), that public education is not a function of the counties but of the State instead, there may be a question as to whether or not the Council could by ordinance alter the provisions of Act No. 734 of 1976 pursuant to Section 3 of Act No. 283 of 1975, the 'home rule' legislation, after January 1, 1980. Until and unless that question is judicially determined, however, my opinion is that the provisions of Act No. 734 of 1976 vest the Council with the authority to recommend the Board members to the Governor for appointment.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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